

REMARKS

Claims 1-6 and 9-33 are pending in the application, with claims 1 and 14 being independent.

Claim 1 is rejected under 35 U.S.C. 112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-33 are rejected under 35 U.S.C. 112, ¶1, as failing to comply with the written description requirement.

Claims 1, 3, 5, 14-15, 18, 23, 26 and 33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Elliott et al. US 20040022237, hereinafter "Elliott" in view of Szabo US20020003779 A1, hereinafter "Szabo."

Claims 4, 6-10, 19-22, 24-25 and 27-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Elliot in view of Szabo, further in view of H. Schulrinne et al. IETF RFC 3550 "RTP: A Transport Protocol for Real-Time Applications," July 2003, hereinafter "RFC 3550."

Claims 2 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Elliott in view Szabo, further in view of Watt US Patent number 5781532, hereinafter Watt.

Claims 11-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Elliott in view of Szabo and Watt, further in view of RFC 3550.

Claims 16-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper et al. U.S. 20040252686 A1, hereinafter Hooper.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code

or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 35 U.S.C. 112, ¶2

Claim 1 is rejected under 35 U.S.C. 112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is traversed.

Applicants' claim 1, as submitted in the response filed on 9/21/2010, does not recite "the first gateway" in the manner asserted by the Examiner. Rather, Applicants' claim 1 states "a first gateway" such that the rejection is moot. Therefore, the rejection should be withdrawn.

Rejection Under 35 U.S.C. 112, ¶1

Claims 1-33 are rejected under 35 U.S.C. 112, ¶1, as failing to comply with the written description requirement. The rejection is traversed.

Rejection Under 35 U.S.C. §112, ¶1

Claim 2 is rejected under 35 U.S.C. §112, ¶1, as failing to comply with the written description requirement. Specifically, the Examiner asserts that the specification does not provide sufficient support for “each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address.” The Examiner further states:

“Note that Applicant stated during telephone interview that the support of this limitation is in page 6, line 18-31, which reads as follows:

Packets traveling to a destination gateway can follow different paths based on the port 206x chosen for the specific RTP flow. The MBCAC algorithm assumes that the selection of a port 206x for an incoming call request is under the control of a call controller in the gateway. Hence, the MBCAC algorithm keeps separate admission policies for the paths from different ports to the same destination gateway. It is also assumed that multiple calls going from a particular port to the same destination gateway follows the same path, i.e., there is no load balancing within the network other than 25 provided by the gateways through the selection of an egress port. This assumption can be satisfied if the gateways use the system IP address of the destination gateway as opposed to the IP addresses of its ports. In this framework, load balancing is supported by controlling the egress port at the source gateway (i.e., first gateway 114). Since each egress port would map into a unique path in the IP network 118, the load from source gateway 114 to a destination gateway (i.e., second gateway 116) can be partitioned into different paths, resulting in load sharing in the network

However, the above cited text does not disclose “first gateway egress interfaces” in the claim language..”

Applicants respectfully disagree with the Examiner’s assertion.

According to MPEP §2173.05(e), the failure to provide explicit antecedent basis for terms does not always render a claim indefinite:

The mere fact that a term or phrase used in the claim has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision

Further, if the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. In this case, the phrase: “each of said

network paths being associated with respective first gateway egress interfaces and a second gateway system IP address” is reasonably ascertainable by those skilled in the art.

From the above passages of the specification and the fundamentals of computer network engineering, an artisan of ordinary skill in the art can discern with a reasonable degree of clarity and precision the meaning of the phrases: “each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address.”

As such, Applicants’ claim 1 is allowable under 35 U.S.C. §112, ¶1. The Examiner is respectfully requested to withdraw the rejection.

Rejection Under 35 U.S.C. 103(a)

Claims 1, 3, 5, 14-15, 18, 23, 26 and 33

Claims 1, 3, 5, 14-15, 18, 23, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo. The rejection is traversed.

The Examiner failed to meet the burden of presenting a *prima facie* case of obviousness because the Examiner’s obviousness analysis is based on erroneous conclusions regarding the cited references.

Elliott in view of Szabo, alone or in combination, fail to teach or suggest all elements of Applicants’ independent claim 1.

The Examiner acknowledges Elliott’s deficiency stating:

“Elliott does not specifically disclose determining, using at least one of the congestion status parameters, whether to accept the new call into the network at the first gateway for transmission toward the second gateway via one of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address.” [See Office Action, page 5].

However, to cure Elliott’s deficiencies, the Examiner proceeded to cite Szabo at paragraph 0028 alleging that Szabo bridges the gap between Elliott and the claimed feature. However, the prior art does not support that assertion.

Contrary to the Examiner’s assertion, Szabo does not disclose:

“determining, using at least one of the congestion status parameters, whether to accept the new call into the network at the first gateway for transmission toward the second gateway via one of the network paths, each of said network paths

being associated with respective first gateway egress interfaces and a second gateway system IP address.”

As stated above, the Examiner cites Szabo at paragraph 0028 alleging that Szabo bridges the gap between Elliott and the claimed feature. The cited passage is reproduced here for ease of reference.

[0028] If it is determined in step 205 that the threshold condition is fulfilled, e.g., that the at least one performance indicator value read from the RTCP mechanism does not exceed a pre-set threshold value, the call is accepted in a step 207. The call establishment procedure is then allowed to proceed according to normal routines. On the other hand, if it is determined in step 205 that the threshold condition is not fulfilled, e.g., that at least one performance indicator value exceeds a pre-set threshold value, the IP telephony gateway rejects the call in a step 209. A negative acknowledgement message may then be transmitted back to the subscriber 103 who has initiated the call.

As can be seen, the above passage does not disclose the claimed status congestion parameters determination step. Rather, the disclosure relates to a certain threshold condition. The cited passage specifically and Szabo generally does not seem to disclose or fairly suggest the above claimed feature. Thus, Applicant has shown that there are claimed features not taught or fairly suggested by Szabo. The Examiner has not accounted for the missing features.

1) *Elliott Fails To Teach Claimed Recitation: Examiner Disregards The Clear Teachings Of The Specification.*

Further, the Examiner alleges that Elliott teaches the first and second elements of the element. Specifically, the two elements are:

“obtaining, at the first gateway, information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway via a plurality of network paths between the first gateway and the second gateway;
determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address;”

The Examiner cites paragraph 0099 in view of Fig. 21B for teaching both claimed elements. The cited passage is reproduced here for ease of reference.

[0099] FIG. 21B depicts an outage recovery scenario illustrating the occurrence of a fiber cut, latency or packet loss failure in the Data Network;

FIG. 21B bears no perceptible relationship with the claimed features that Applicants can discern.

Accordingly, for all of the above reasons, Applicant's independent claim 1 is allowable under 35 U.S.C. §103(a) over Elliott and Szabo, alone or combined.

2. *Rejections On Obviousness Cannot Be Sustained By Mere Conclusory Statements: Examiner's Burden Not Met.*

Further, in an attempt to articulate a motivation, the Examiner makes the following statement:

"Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply Szabo's teaching above to the gateways disclosed by Elliott for the benefit of ensuring "a transmission path with acceptable transmission quality." ([0008] of Szabo). (See Office Action page 6).

This motivation is deficient because it fails to explain why one of ordinary skill in the art would be motivated to perform the modifications in order to achieve such results. The Examiner's conclusory statement is unaccompanied by evidence or reasoning and is entirely inadequate to support the rejection. The motivation to combine the cited references must exist in foresight not in hindsight.

Further, an artisan of ordinary skill in the art would not be motivated to combine Elliott with Szabo because the combination does not operate to produce the claimed features as articulated above. Accordingly, the Examiner fails to provide the necessary motivation.

As such, at least for these reasons, Elliott, and Szabo, alone or in combination, fail to teach or suggest all of the elements of Applicants' claim 1.

Thus, Applicants' claim 1 is allowable over the combination of Elliott and Szabo. Similarly, Applicants' claim 14 recites limitations similar to the limitations of Applicants' claim 1 and, thus, at least for the same reasons provided with respect to claim 1, claim 14 also is allowable over the combination of Elliott and Szabo. Furthermore, since all of the dependent claims that depend from the independent claim include all the

limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over the combination of Elliott and Szabo.

Therefore, the rejection should be withdrawn.

Claims 2, 4, 6-13, 16-17, 19-22, 24-25 and 27-32

Claims 4, 6-10, 19-22, 24-25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliot in view of Szabo, further in view of RFC 3550. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo and Watt, further in view of RFC 3550. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view Szabo, further in view of Watt. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper. The rejections are traversed.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Elliott in view of Szabo. Since such rejection has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that the additional references supply that which is missing from Elliott and Szabo to render the independent claims obvious, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.


Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 542-2280 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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